

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

SECOND APPEAL NO. 320 OF 2005

Sou. Leelawati Kisan Kumbhar.. ... Appellant.

Versus

Smt.Kaveribai Dhondiba Degale.. ... Respondent.

Mr. Suhas Oak with Ms.Jayana Thatte for the Appellant.

Mr. S. S. Kulkarni for the Respondent.

CORAM : ANOOP V. MOHTA, J.

DATED : 25TH NOVEMBER, 2005.

P.C.:

Heard.

2. Learned Counsel appearing for the appellant, basically contended that based on the admission given by the other party, the document / transaction dated 17th April, 1975 should be considered as a transaction of mortgage. If that is taken note of then the suit is within limitation.

3. The trial court in fact based on such admission

decreed the suit and passed order accordingly including direction to execute the Sale Deed of a suit property in favour of the Plaintiff.

4. The appellate court based on the same foundation of admission, as sought to be contended by the learned Counsel appearing for the appellant, given a clear finding in para 12 of the judgment basically by noting the fact that the document in question i.e. 17th April, 1975 itself was not placed on record. Even though there is no dispute in so far as execution of such document, still the question is, while interpreting or relying on such document, the parties need to place on record the supporting basic foundation, if they wanted to press any relief based on such document. The appellate court was right in observing that in the absence of document dated 17th April, 1975 it is difficult to consider the case and basically the nature of the transaction which was the bone of contention in the present appeal, that the suit transaction was a mortgage or a conditional sale of reconveyance.

5. Taking into account the reasoning given by the appellate court, there is no doubt that in the absence

of any document on record, merely based on the so called admission, it is difficult to accept the case of the appellate that particular transaction was a mortgage. Learned Counsel appearing for the respondent rightly submitted that in the absence of specific pleading and the fact that suit was not based on fact of such mortgage transaction, the argument and/or submission raised by the learned Counsel for the appellant cannot be accepted.

6. Apart from this the case as made out, no where supports and/or borne out that the transaction in question that it was a mortgage and specifically in view of the pleading as well as in the absence of main document in question. In view of this there is no substantial question of law raised. The order impugned is within the framework of law and record need no interference. In view of this second appeal is dismissed.

Sd/-

(ANOOP V. MOHTA, J.)